

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
DEXTER D. NICHOLSON,)
)
Appellant,)
)
vs.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)
_____)

PCHB No. 89

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter is the appeal of a \$25 civil penalty imposed on appellant by respondent Authority for an alleged violation of Section 4.01 of Regulation I of respondent Authority and is an asserted open burning at appellant's residence at 3301 Columbia Heights Road, Longview, on January 6, 1972.

The matter came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) at a hearing in the Longview Public Library at 1:00 p.m., April 5, 1972. Appellant appeared, accompanied by his wife. Respondent was represented by its counsel, James Ladley. Helen

1 Lane, a court reporter from Chehalis, prepared the record.

2 The hearing officer began the proceedings by explaining that an
3 informal conference (WAC 371-08-110) first would be held in an effort
4 to achieve a compromise settlement leading to final disposition of the
5 matter. He said that if no settlement appeared possible, the proceedings
6 would become a formal hearing.

7 At this point, appellant, although acknowledging he had been
8 notified by the Pollution Control Hearings Board that the proceeding
9 might include a formal hearing, protested his witnesses were not present.
10 The hearing officer responded that if the matter became a formal hearing,
11 an effort would be made to proceed as far as possible and that if
12 appellant then felt the testimony of witnesses not present was necessary
13 either the hearing would be continued to another date when the witnesses
14 could be heard, or their testimony would be taken by deposition.

15 Mr. Ladley said respondent Authority felt that it already had
16 tempered its action in the matter as much as it could in view of what
17 he said was appellant's "subterfuge" in cloaking a deliberate open
18 burning violation as a "weiner roast." He said that if respondent
19 Authority were to yield further in the matter, the Authority's ban on
20 open burning becomes meaningless and unenforcible. He suggested,
21 however, that the Authority might be willing to suspend the civil
22 penalty, which already had been cut to 1/10th of the allowable maximum
23 amount, if appellant would concede the violation.

24 The hearing officer asked appellant if he would accept a suspension
25 of the civil penalty in exchange for conceding violation of the
26 respondent Authority's ban on open burning. The appellant replied in the
27 negative.

FINDINGS OF FACT,

1 The hearing officer then attempted to announce that the informal
2 conference had failed to produce a mutually acceptable settlement and
3 that the proceeding would assume the status of a formal hearing. He was
4 interrupted by appellant who demanded to know when he was going to be
5 allowed to present his side of the dispute. The hearing officer
6 explained the procedure of a formal hearing and said that appellant
7 would be given a full opportunity to present his case. The appellant
8 demanded to know when his non-present witnesses would be heard. The
9 hearing officer again explained that the formal hearing either would be
10 recessed to a later date to hear them or their testimony would be taken
11 by deposition.

12 The hearing officer again attempted to begin the formal hearing by
13 asking counsel for respondent Authority to present his first witness.
14 At this point, appellant's wife interrupted to contend that the hearing
15 officer was not giving appellant fair treatment. Appellant and his
16 wife conferred briefly, then appellant announced that he would obtain
17 justice in a court of law. Appellant and his wife left the hearing room.

18 The hearing officer was advised by counsel for respondent Authority
19 that brief testimony should be heard to establish respondent's case.

20 Donald C. Hogarty, Jack R. Goertz and Jim Ablin, members of
21 respondent Authority's staff, were sworn and testified.

22 On the basis of the testimony heard, the Pollution Control
23 Hearings Board makes these

24 FINDINGS OF FACT

25 I.

26 On January 6, 1972, at his residence in Longview, appellant burned
27 a large amount of laurel hedge clippings in an open fire which measured

FINDINGS OF FACT,

1 6'x4'x2' high.

2 II.

3 When asked by an official of respondent Authority to extinguish
4 the fire, appellant refused to do so.

5 III.

6 When served by said official with a field notice of violation,
7 appellant refused to accept it.

8 After consideration of the record of these proceedings and in
9 view of the facts, the Pollution Control Hearings Board comes to these

10 CONCLUSIONS

11 I.

12 Appellant is in violation of Section 4.01 of Regulation I of the
13 Southwest Air Pollution Control Authority.

14 II.

15 Respondent Authority was reasonable and lenient in assessing a
16 minimal civil penalty of \$25.

17 In view of these conclusions, the notice of violation and civil
18 penalty are sustained.

19 DONE at Seattle, Washington this 2nd day of June, 1972.

20 POLLUTION CONTROL HEARINGS BOARD

21 Matthew W. Hill
22 MATTHEW W. HILL, Chairman

23 Walt Woodward
24 WALT WOODWARD, Member

25 James T. Sheehy
26 JAMES T. SHEEHY, Member

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER